

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 06-
 :
 v. : 22 U.S.C. § 2778
 : 22 C.F.R. § 120, *et seq.*
 STATE METALS INDUSTRIES, INC. : 18 U.S.C. § 2
 :
 : I N F O R M A T I O N

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

A. FACTUAL BACKGROUND

1. At all times relevant to this Information:

(a) State Metals Industries ("SMI"), located in Camden, New Jersey, was a smelting facility specializing in the purchase of scrap metal and the production and sale of aluminum ingots, or bars, from that scrap metal.

(b) Sparrow missiles were medium-range, radar-guided, all-weather, all-aspect, semi-active guided missiles designed by Raytheon and General Dynamics in the United States for the United States military and its NATO allies, including Taiwan. Sparrow missiles had highly explosive warheads and were used in a variety of roles on both fighter aircraft and naval vessels. (In the Persian Gulf war, the radar-guided AIM-7 Sparrow missile, discussed below, was found to be the most potent air-to-air weapon used by Air Force fighter pilots.)

(c) Under the U.S. Arms Export Control Act (Title 22, United States Code, Section 2778), and its corresponding regulations, the International Traffic in Arms Regulations ("ITAR"), Sparrow missiles and any of their individual components could not be exported without an export license from the U.S. Department of State.

2. In or about April 2003, the Department of Defense ("DoD") issued an Invitation to Bid for the purchase of certain military surplus items, including Sparrow missile components. In the Invitation for Bid, the DoD described the items in pertinent part as: "aluminum scrap, including residue of demilitarized control sections, missile bodies, shipping cradles and containers, which have been rendered inert." Although rendered inert, these military surplus items were still of notable intelligence value to other countries, and prohibited from export without a license from the U.S. Department of State. Accordingly, DoD would only sell these military surplus items to United States purchasers for an approved use (or approved disposition) within the United States.

3. In the Invitation to Bid, the DoD informed potential purchasers that the military surplus items were "dangerous property" and "Military Munitions List items" which were subject to stringent export controls under ITAR. The DoD's Invitation to Bid further warned that:

The use, disposition, export and reexport of this property is subject to all applicable U.S. laws and regulations, including [among other laws cited] the Arms Export Control Act (22 C.F. R. [§] 2751, *et seq.*) . . . [and] International Traffic in Arms Regulations (22 C.F.R. [§] 120, *et seq.*) . . . which among other things, prohibits . . . Any use or disposition, export or reexport of the property which is not authorized in accordance with the provisions of this agreement.

The DoD's Invitation to Bid further instructed:

Before any export or reexport of this property is attempted, contact the Office of Defense Trade Controls, Department of State and the Bureau of Export Administration, Department of Commerce for export licensing requirements.

4. On or about April 22, 2003, SMI, through its Vice President, submitted a bid to the DoD to purchase the military surplus items in the Invitation to Bid, including export controlled Sparrow missile components. In support of its bid, SMI sent the DoD an end-user certificate as required by the DoD to ensure that the items would be properly disposed of and would not be exported from the United States.

5. In the end-user certificate, SMI's Vice President expressly certified that: (a) SMI would not resell the military components in the form received from the DoD; (b) SMI would not sell or otherwise dispose of the military components for use outside of the United States; (c) SMI would smelt these military components on-site, turning them into aluminum ingots; and (d) SMI would resell the aluminum ingots only within the United States.

6. On or about June 16, 2003, after approving SMI's end-user certificate, and in reliance on the statements therein, the DoD awarded SMI the bid for the military surplus items discussed above.

7. In or about July 2003, SMI received the military surplus items. These items included parts of the AIM-7 Sparrow missile, including the antennae section of the missile's guidance system.

8. Contrary to SMI's certified end-user certificate, SMI (a) did not smelt the Sparrow missile components into aluminum ingots for exclusive use inside the United States and, instead, (b) sold them, intact, for export outside of the United States.

9. On or about February 13, 2004, approximately seven months after receiving the items from the DoD, SMI sold the Sparrow missile components - in the same form in which SMI received them from the DoD - to an entity owned in part by the government of the People's Republic of China ("PRC"), for export to the PRC, without obtaining or even applying for the requisite export license from the Department of State.

10. SMI employees loaded the Sparrow missile components into a forty-foot shipping container (the "Sparrow Missile Container") destined for the People's Republic of China ("PRC") in a manner designed to conceal the nature of the cargo. Specifically, the Sparrow missile components were concealed in

the nose of the Sparrow Missile Container (at the furthest point from the doors), behind and underneath scrap metal.

11. On or about March 24, 2004, the Sparrow Missile Container was delivered to the Maher Terminal at Port Elizabeth, Elizabeth, Union County, New Jersey, for export to the PRC.

12. On or about March 25, 2004, U.S. Customs and Border Protection inspectors opened the Sparrow Missile Container, inspected its contents and discovered approximately 192 pieces of what was later identified as part of the guidance system of the AIM-7 Sparrow missile, which appear to be in the same form as when the DoD sold them to SMI.

**B. LEGAL BACKGROUND: THE ARMS EXPORT CONTROL ACT/
INTERNATIONAL TRAFFIC IN ARMS REGULATIONS ("ITAR")**

13. The Arms Export Control Act, 22 U.S.C. § 2778, authorizes the President to control the export of defense articles and services from the United States. The Act requires every person engaged in the business of exporting defense articles from the United States to obtain a license or other approval from the U.S. Department of State. 22 U.S.C. § 2778(b)(1)(A)(i). The regulations promulgated pursuant to the Act, known as the International Traffic in Arms Regulations (hereafter, "ITAR") provide the following definitions of exporting:

- (1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside the United States by a person whose

personal knowledge includes technical data; or . . .

- (3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or
- (4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad

22 C.F.R. § 120.17.

14. The ITAR defines a defense article and service to be any item on the United States Munitions List contained in the regulations. The Munitions List sets forth twenty-one categories of defense articles that are subject to export licensing controls by the State Department's Directorate of Defense Trade Controls ("DDTC"). 22 C.F.R. § 121.1. Category XII on the Munitions List includes "Fire Control, Range Finder, Optical and Guidance and Control Equipment," including the AIM-7F Sparrow Missile components discussed herein.

15. Unless an exemption applies, the ITAR requires registration of all persons who intend to export a defense article to obtain the approval of the DDTC before engaging in such an export. 22 C.F.R. § 123.1(a).

16. With regard to countries against which the United States has an arms embargo and which are listed in 22 C.F.R. Section 126.1, the ITAR provides that:

It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. . . . This policy . . . applies to countries with respect to which the United States maintains an arms embargo (e.g., . . . China . . .)

22 C.F.R. Section 126.1(a).

17. From in or about April 2003, to in or about April 2004, in Union and Camden Counties, in the District of New Jersey, and elsewhere, the defendant

STATE METAL INDUSTRIES, INC.,

did knowingly and willfully export and attempt to export to the People's Republic of China defense articles, designated as "Fire Control, Range Finder, Optical and Guidance and Control Equipment" on the United States Munitions List, Title 22 Code of Federal Regulations, Section 121.1, Category XII, namely, components of the AIM-7F Sparrow Missile, without first obtaining the required license for such export.

In violation of Title 22, United States Code, Section 2778, and Title 22, Code of Federal Regulations, Section 120, et seq., and Title 18, United States Code, Section 2.

CHRISTOPHER J. CHRISTIE
United States Attorney